IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
March 14, 2006 Session

STATE OF TENNESSEE v. EDWARD HUTCHINSON

Appeal from the Circuit Court for Dickson County
No. CR7382 Robert E. Burch, Judge

No. M2005-01874-CCA-R3-CD - Filed May 26, 2006

The Appellant, Edward Hutchinson, presents for review a certified question of law following his guilty plea to driving under the influence ("DUI"), first offense. *See* Tenn. R. Crim. P. 37(b)(2)(i). As a condition of his guilty plea, Hutchinson explicitly reserved a certified question of law challenging the denial of his motion to suppress evidence obtained pursuant to a warrantless stop and seizure. Hutchinson argues that the officer did not have reasonable suspicion when he subjected Hutchinson to an investigatory stop. Finding no error, the judgment of the trial court is affirmed.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

DAVID G. HAYES, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ROBERT W. WEDEMEYER, JJ., joined.

Michael J. Flanagan, Nashville, Tennessee, for the Appellant, Edward Hutchinson.

Paul G. Summers, Attorney General and Reporter; Preston Shipp, Assistant Attorney General; Dan M. Alsobrooks, District Attorney General; Ray Crouch and Billy Miller, Assistant District Attorneys General, for the Appellee, State of Tennessee.

OPINION

Procedural History

On May 28, 2004, Officer David Nickens of the Dickson Police Department was working a traffic site on Highway 46 South in front of Dickson Square when he was approached by a white male in his mid-thirties. The unknown informant advised Officer Nickens that he had just left the Auto Zone store, less than half a mile away, and that "there was a man inside raising his voice to the clerk" and a "skinny white man" standing outside the store beside "an old red Porsche" who was "flicking a knife open, back and forth flipping it open."

When Officer Nickens reached the Auto Zone store, he observed a red Porsche pulling out of the parking lot toward State Highway 47. Nickens pulled behind the Porsche and activated his blue lights. Upon reporting the stop to central dispatch, he observed that the Porsche did not have any tags displayed. Officer Nickens proceeded to question the Appellant, who was driving the red Porsche, and the passenger about a possible disturbance in the Auto Zone store. The Appellant replied that he had not been inside the store. In response to whether he had any weapons in the vehicle, the Appellant stated that he had a "work knife" in his right front pocket. Nickens asked the Appellant to exit the vehicle, and, upon conducting a weapons search, he located a "large hunting knife" on the Appellant's person. The Appellant was "unsteady on his feet" and admitted that he had drunk one beer. Officer Nickens found an empty twenty-four ounce Budweiser can inside the vehicle, as well as a temporary tag that had expired and been altered. Based upon the Appellant's demeanor and his poor performance on various field sobriety tests, the Appellant was arrested for driving under the influence.

On August 30, 2004, a Dickson County grand jury returned a four-count indictment charging the Appellant with: (1) DUI, second offense; (2) violation of the seatbelt law; (3) violation of the registration law; and (4) having no proof of insurance. On December 28, 2004, the Appellant filed a motion "to suppress all evidence and testimony related thereto, obtained pursuant to a warantless stop and/or seizure of the [Appellant] on or about May 28, 2004." A suppression hearing was held on January 20, 2005. In support of the motion, the Appellant alleged that the warrantless stop of his vehicle was not supported by probable cause or reasonable suspicion. The trial court found that Officers Nickens conducted a proper investigatory stop and denied the motion to suppress.

On July 27, 2005, the Appellant pled guilty, under the terms of a plea agreement, to DUI, first offense. The remaining charges were dismissed. As part of the plea agreement, the Appellant received a sentence of eleven months and twenty-nine days, which was suspended after forty-eight hours in confinement, with the balance to be served on probation. Moreover, as part of the agreement, the Appellant explicitly reserved a certified question of law, which is now before this court on appeal.

Analysis

In this appeal, the Appellant seeks review of the following certified question of law: "Whether or not the officer's seizure of the [Appellant] was based on a reasonable suspicion supported by specific and articulable facts[?]"

I. Certified Question of Law

Rule 37(b)(2)(i), Tennessee Rules of Criminal Procedure, allows an appeal from a guilty plea in certain cases under very narrow circumstances. An appeal lies from a guilty plea, pursuant to Rule 37(b)(2)(i), if the final order of judgment contains a statement of the dispositive certified question of law reserved by the Appellant, wherein the question is so clearly stated as to identify the scope and the limit of the legal issues reserved. *State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1988). The

order also must state that the certified question was expressly reserved as part of the plea agreement, that the State and the trial judge consented to the reservation, and that the State and the trial judge are of the opinion that the question is dispositive of the case. *Id.* An issue is dispositive when this court must either affirm the judgment or reverse and dismiss. *State v. Wilkes*, 684 S.W.2d 663, 667 (Tenn. Crim. App. 1984). If these circumstances are not met, this court is without jurisdiction to hear the appeal. *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996). Having viewed the record before us, we determine that the certified question is dispositive. Accordingly, we examine the merits of the Appellant's issue.

II. Motion to Suppress

An appellate court, when evaluating the correctness of the trial court's ruling on a motion to suppress, is required not only to consider the evidence that was before the trial court at the hearing on the motion, but it should also consider the entire record. In reviewing the issue on appeal, a trial court's findings of fact will be upheld unless the evidence preponderates otherwise. *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996); *see also State v. Randolph*, 74 S.W.3d 330, 333 (Tenn. 2002). The prevailing party in the trial court is "entitled to strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." *Odom*, 928 S.W.2d at 23. Furthermore, "questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Id.* However, this court reviews the trial court's application of the law to the facts under a *de novo* standard of review without any deference to the determinations of the trial court. *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001).

On appeal, the Appellant argues that even accepting the testimony of Officer Nickens as true, *i.e.*, that an altercation was occurring inside the Auto Zone Store, that a skinny white man was displaying a knife while standing beside a red Porsche, and that the officer observed a red Porsche driving through the Auto Zone parking lot, the facts, in and of themselves, do not provide reasonable suspicion for an investigative stop. Specifically, the Appellant argues that these facts fail to establish that the person beside the Porsche had any connection with the person involved in an altercation inside the store or that the person driving the vehicle was the person with the knife.

In denying the Appellant's motion to suppress, the trial court concluded:

> Whether you had a violation of the law, [the officer] did not necessarily have to have probable cause that that law was being violated. What he had was a situation where there was a weapon being displayed having to do with some type of altercation. It might have been a violation of the law, it might not. It is the duty of the officer to investigate. The persons at the place of business would still be there ten minutes later. The [Appellant] was driving off; therefore, he had to secure the [Appellant] or at least slow him down to investigate this to see what was going on. Therefore, the Court rules that it was a proper investigatory stop for the purpose of determining whether a crime had been committed. The Motion to Suppress is respectfully denied.

It is undisputed that the Appellant was "seized" when the officer activated his blue lights and stopped the Appellant exiting the Auto Zone parking lot. *See State v. Williams*, 185 S.W.3d 311, 316-17 (Tenn. 2006). The Appellant, however, misconstrues the term "reasonable suspicion." In order to stop a vehicle, a law enforcement officer must have either probable cause or reasonable suspicion supported by specific and articulable facts to believe that an offense has been or is about to be committed. *Randolph*, 74 S.W.3d at 334.

> The officer, of course, must be able to articulate something more than an inchoate and unparticularized suspicion or hunch. The Fourth Amendment requires some minimal level of objective justification for making the stop. That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence.

State v. Keith, 978 S.W.2d 861, 867 (Tenn. 1998) (*quoting United States v. Sokolow*, 490 U.S. 1, 7-8, 109 S. Ct. 1581, 1585 (1989)). Our supreme court in *State v. Yeargan*, 958 S.W.2d 626, 632 (Tenn. 1997) (citing *Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990)), observed:

> Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

Moreover, as the Supreme Court stated in *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 695 (1981):

> The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain commonsense conclusions about human behavior; jurors as factfinders are permitted to do the same - - and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.

In determining whether reasonable suspicion existed for the stop, a court must consider the totality of the circumstances. *State v. Binnette*, 33 S.W.3d 215, 218 (Tenn. 2000). Those circumstances include the personal observations of the police officer, information obtained from other officers and agencies, information obtained from citizens, and the pattern of operation of certain offenders. *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992). Additionally, the court must consider any rational inferences and deductions that a trained officer may draw from those circumstances. *Id.* Objective standards apply rather than the subjective beliefs of the officers making the stop. *State v. Norwood*, 938 S.W.2d 23, 25 (Tenn. Crim. App. 1996).

Here, the facts establish that the officer had information from a citizen informant regarding two individuals; one was inside the Auto Zone store engaged in an altercation, and another was

beside a red Porsche displaying a knife. Moments later, two individuals were observed leaving the Auto Zone parking lot in a red Porsche. Considering the totality of the circumstances, we conclude that Officer Nickens had reasonable suspicion, based upon these facts, to affect a brief investigative stop of the Porsche.

CONCLUSION

Based upon the foregoing, we conclude that the trial court did not err in denying the Appellant's motion to suppress. As such, the judgment of the trial court is affirmed.

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DAVID G. HAYES, JUDGE